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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

14
15 **BARRY SIMON JAMESON,**

Petitioner,

17 v.

18 **JAMES A. YATES, Warden,**

19 Respondent.

C07-03160 SBA

**REPLY TO OPPOSITION TO
MOTION TO DISMISS**

Judge: The Honorable
Saundra B.
Armstrong

20
21 **REPLY**

22 Respondent Warden moved to dismiss Petitioner Jameson's habeas corpus petition on the
23 ground that he failed to exhaust his state court remedies. Respondent moved to so dismiss
24 because Petitioner's habeas petition only identified the state-court petitions that he filed to
25 challenge his underlying criminal conviction, and not those pertaining to his current federal
26 habeas claims. (Pet. at 4-5.) Moreover, a search of the California Supreme Court docket using
27 Petitioner's name showed that he had filed 25 petitions in the Supreme Court; thus, Respondent
28 was unable to readily identify the petition that might relate to the current claims, if any did. (Ex.

Reply to Opp'n to Mot. to Dismiss

Jameson v. Yates
C07-03160 SBA

1 1 - Search Results for Cal. Sup. Ct.)

2 To his opposition, Petitioner attached the California Supreme Court's August 16, 2006
3 decision denying his habeas petition. Based on the case number indicated on the order,
4 Respondent was able to request a copy of the corresponding petition from the California
5 Supreme, and now concedes that Petitioner has exhausted his state court remedies.

6 After the Court's ruling on this motion, however, Respondent requests an opportunity to file
7 another motion to dismiss based on Petitioner's failure to state a prima facie case for relief and
8 the statute of limitations. The entire crux of Petitioner's habeas petition is that he is being held
9 past his determinate term because Petitioner alleges that he received a fixed sentence of fifteen
10 years plus a two-year enhancement, with a five-year parole term. (See Pet. at 13.) But the
11 Abstract of Judgement attached to Petitioner's habeas petition shows that he received a
12 seventeen-year-to life indeterminate term for a second-degree murder conviction. (Ex. A to Pet. -
13 Abstract of J.) The fact that the sentencing court selected fifteen years as Petitioner's base term
14 does not change the indeterminate nature of Petitioner's sentence. Cal. Penal Code § 190(a)
15 (punishment for second-degree murder is imprisonment in the state prison for a term of fifteen
16 years to life).

17 Moreover, because Petitioner alleges that he should have been released by August 1999, his
18 alleged maximum release date (pet. at 16), his claim accrued in August 1999 and he had until
19 August 2000 to file his federal petition. Because he filed the original petition in June 2007, his
20 petition is untimely.

21 Thus, because there are additional grounds on which to dismiss Petitioner's claims,
22 Respondent requests an opportunity to file another motion to dismiss.

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CONCLUSION

Because Petitioner has now satisfied his burden of showing exhaustion of his state-court remedies, Respondent respectfully requests an opportunity to file another motion to dismiss on the grounds briefly discussed above. Alternatively, Respondent requests sixty days from the Court's ruling on this motion to dismiss to file an answer to the habeas petition.

Dated: December 3, 2007

Respectfully submitted,

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Barry Jameson v. James Yates**

Case No.: **C07-03160 SBA**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On December 4, 2007, I served the attached

REPLY TO OPPOSITION TO MOTION TO DISMISS

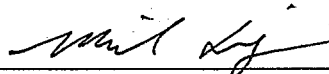
by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid; in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Barry S. Jameson
C-88511
Pleasant Valley State Prison
P.O. Box 8500
Coalinga, CA 93210
in pro per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **December 4, 2007**, at San Francisco, California.

M. Xiang

Declarant



Signature